

EXECUTIVE OFFICER SUMMARY REPORT
May 14, 2003

ITEM: 14

SUBJECT: STATUS REPORT: IMPLEMENTATION OF SAN DIEGO COUNTY MS4 STORM WATER PERMIT, CONTINUED FROM THE APRIL 9, 2003 BOARD MEETING (John Robertus)

PURPOSE: This item is a continuation of Item 8 of the April 9, 2003 Board Meeting, which provided the County of San Diego with the opportunity to confirm or deny its intent to serve in a leadership role as the Principal Co-Permittee to facilitate implementation of the San Diego Municipal Separate Storm Sewer System (MS4) Permit.

PUBLIC NOTICE: This item was included on the May 14, 2003 Regional Board Meeting Agenda Notice, which was issued on April 25, 2003 in accordance with Government Code Section 11125.

DISCUSSION: At the April 9, 2003 Board Meeting, the County of San Diego confirmed its intention to serve in a leadership role as the Principal Co-Permittee to facilitate implementation of the San Diego MS4 Permit. The County of San Diego also used the Board Meeting as an opportunity to inform the Regional Board that it intends to continue to exercise its right to "raise stormwater and clean water issues in public forums, including the Regional Board, the courts, and the Legislature."

The County of San Diego further offered to work with the Regional Board to amend the San Diego MS4 Permit in order to address the issues raised in the original draft of Assembly Bill 1517. These issues include the County of San Diego's contention that the San Diego MS4 Permit and the water quality objectives on which the Permit is based are not adequately backed by science.

The Regional Board requested the County of San Diego's documentation supporting the original findings of Assembly Bill 1517, including the County of San Diego's contention that the water quality objectives utilized by the Regional Board are inadequately science-based. To date, the County of San Diego has not provided this information.

While awaiting the documentation requested by the Regional Board, staff has been solicited by the County of San Diego to meet

and discuss the scientific basis for the requirements of the San Diego MS4 Permit. As the County of San Diego has previously stated, its purpose in requesting this meeting is to seek amendments to the San Diego MS4 Permit requirements.

As the County of San Diego and other Co-Permittees are aware, the scientific support for the requirements in the San Diego MS4 Permit has previously been reviewed and acknowledged by the Regional Board during adoption of the Permit. The scientific backing for the Permit's requirements were discussed in several documents, including the "Fact Sheet/Technical Report for SDRWQCB Order No. 2001-01." This document includes a 187-page discussion of the requirements, as well as an over 300-page Response to Comments section.

LEGAL CONCERNS: None

RECOMMENDATIONS: None

SUPPORTING
DOCUMENTS:

Recent Newspaper Articles:

1. "Plan Shunned for Urban-Runoff Bill." San Diego Union Tribune. April 10, 2003.
2. "County to Remain Lead Agency on Stormwater Rules." North County Times. April 10, 2003.
3. "Commentary: The Limits of Storm-Water Treatment." Long Beach Press Telegram. April 26, 2003.

Supporting Document No. 1

Item No. 14
May 14, 2003

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Plan shunned for urban-runoff bill

Legislator asked to gut proposal

By Terry Rodgers

STAFF WRITER

April 10, 2003

LAGUNA BEACH – San Diego County has backed away from proposed legislation written by its staff that would have undermined the state's ability to enforce urban-runoff pollution regulations.

The bill outraged environmentalists and prompted the region's pollution-enforcement agency, the San Diego Regional Water Quality Control Board, to question whether the county had betrayed its leadership role in cleaning local waters.

Appearing yesterday before the water-quality board, county officials said they have asked Assemblyman George Plescia, R-San Diego, who introduced AB 1517 in February at the county's behest, to gut the bill and replace it with less-controversial language.

The county's action averted a possible showdown with the water-quality board, which in 2001 adopted one of the nation's toughest urban-runoff control measures.

The regulations require builders of new development and major redevelopment projects to install storm drain filters, silt-removal ponds and other devices that reduce contaminants in storm water. Builders also must prevent erosion at their construction sites.

The bill authored by the county would have given local government the flexibility to do whatever it deemed was affordable and practical to reduce urban-runoff pollution. The state's power to force cities to increase their efforts under the threat of severe fines would have been eliminated.

With the county acting as the coordinator and leader, the region's 18

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cities and San Diego Unified Port District are required to strictly enforce the regulations by hiring more staff and retraining their building inspectors.

The county's water-quality program manager, Jon Van Rhyn, touted the county's performance as leader of a regional storm water discharge permit and said it remains committed to clean water.

"The county took the lead on developing an aggressive and implementable storm water ordinance that put flesh on – and teeth into – the directives of this permit," Van Rhyn said.

"Our qualifications have been clearly demonstrated – our resolve is undiminished. In short, we'll continue to serve capably and effectively."

The chairman of the water-quality board, Jack Minan, said he was satisfied with the county's response. Minan offered to "open the door" to further talks with county officials to address their concerns about the cost and effectiveness of the urban-runoff regulations.

The regional board's conciliatory reaction yesterday follows an exchange of tersely worded letters between the two agencies.

A March 18 letter from John Robertus, the regional board's executive director, chided the county for attempting to "undermine" the state's efforts to reduce urban-runoff pollution.

In response, county Chief Administrative Officer Walt Ekard accused the regional board of "seeking to stifle dissent" by threatening to remove the county from its leadership role.

Ekard offered no apologies for the county's actions.

"When we feel it is necessary and appropriate, the county will also raise storm water and clean water issues in public forums, including the regional board, the courts and the Legislature, as has been done with Assembly Bill 1517," Ekard wrote.

The bill, which was written by Rodney Lorang, a senior county counsel, would have achieved what the San Diego Building Industry Association failed to gain when a Superior Court judge earlier this year dismissed its lawsuit challenging the regional board's urban-runoff regulations.

Marco Gonzalez, an attorney for San Diego BayKeeper, has threatened to sue the county over the manner in which the bill was drafted. County officials have acknowledged that supervisors discussed the legislation with Lorang and other staff members in closed session.

Gonzalez contends those discussions were improper and violated state law.

"This is far from over," Gonzalez said. "The county won't be off the hook until they rescind their original approval of the legislative proposal."

Terry Rodgers: (619) 542-4566; terry.rodgers@uniontrib.com

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Supporting Document No. 2

Item No. 14
May 14, 2003

County to remain lead agency on stormwater rules
North County Times – 4/10/03
MARTY GRAHAM
Staff Writer

LAGUNA BEACH ---- Called on the carpet by the state for challenging storm-drain runoff rules at the same time they are supposed to lead countywide compliance, San Diego County officials Wednesday told state officials that the county is doing a good job and wants to stay with it.

"As our programs have shown, we have always worked to meet minimum requirements and have often exceeded them," said Jon Van Rhyn, water quality program manager for the county. "We will continue to serve capably and effectively."

Members of the state Regional Water Quality Control Board had demanded that the county commit to the rules after county officials last month asked Assemblyman George Plescia, R-La Jolla, to propose a bill that would weaken the regional board's ability to enforce stormwater rules. The bill, which was written by county officials, said that the rules lacked scientific basis.

On Wednesday, the regional board accepted the county's offer to revise the Plescia bill so that control would remain with the state, and the bill would not seek to condemn the board's goals as being not based on science.

"(Scientists) have been studying this for 15 years or longer," said board member Gary Stephany. "When I read there's no scientific evidence, that we just willy-nilly adopted some rules, I wasn't pleased.

"There's been science on this for 15 years," Stephany added.

Scientists say that storm-drain runoff is the single largest source of pollution ending up in the streams, lagoons and the ocean in Southern California. Storm drains are a separate set of pipes from the sewer system, where waste is treated to being nearly clean before it is dumped far out into the ocean.

In contrast, waste in storm drains remains full of toxins, bacteria, fertilizer, dirt, metals and filth that wash directly into streams, lagoons and the ocean, where they can choke the life out of the plants and creatures living there.

In February 2001, the regional board enacted one of the strictest set of storm-drain rules in the nation to try to reduce the amount of pollution in regional waters caused by runoff. Shortly after that, the county became the

lead municipal government of the 18 cities and two regional governments that must follow the new rules.

The county filed an inch-thick appeal of the rules before they were enacted, then took part in an unsuccessful lawsuit against the regional board that challenged the board's legal right to put the rules in place. Then, after the board won the suit, the county supervisors launched the Plescia measure, Assembly Bill 1517.

At the same time, the county has stepped up its education and enforcement programs and has won praise from the board's staff for its work in those areas.

In March, the chairman of the regional board called on the county to decide whether it wanted to be the lead agency for a set of rules the county had also been fighting.

County supervisors last week approved a written response to the regional board's demand that accused the regional board of "seeking to stifle dissent," and argued that the county had worked hard to comply with the rules.

But, board members and environmental activists noted, the elected county officials who took steps to fight the rules weren't at the Wednesday meeting where their underlings fought for the county's position.

"We are highly disappointed that the decision-makers responsible for the original problems were not here today," said Laura Hunter of the Environmental Health Coalition.

Still, Hunter said, "We are certainly pleased to see the county has had a significant change of heart."

Supporting Document No. 3

Item No. 14
May 14, 2003

RUNOFF CONTROL

Commentary: The limits of storm-water treatment

Long Beach Press Telegram - 4/26/03

By James E. Moore II, Peter Gordon, Harry Richardson, John Kuprenas, and Jiin-Jen Lee

The April 7 neutering of Assembly Bill 1517 increases the likelihood that large fiscal burdens will be imposed on California's cities and counties for storm-water treatment programs. Introduced in February by Assemblyman George Plescia, R-San Diego, the original version of AB 1517 unambiguously barred the State Water Resources Control Board and regional boards from ever prohibiting the discharge of municipal stormwater into California water bodies.

The bill was vehemently opposed by the environmentalists controlling the State and regional boards. The amended version of the bill is watered down to the point of merely stating the state Legislature's intent to "foster science-based, environmentally beneficial, results-oriented, and cost-effective water quality programs.

In 2001, the San Diego regional water quality board mandated what are perhaps the nation's furthest-reaching controls on urban run-off, which includes storm water. Unfortunately, the Los Angeles regional board views San Diego's measures as a good model.

Every five years, the Los Angeles board issues a permit on behalf of the federal government defining waste discharge requirements for the Los Angeles county and cities.

Our University of Southern California research team recently concluded that advanced treatment of storm water is the most likely outcome of current federal and state water-quality regulations. This would be massively expensive, and local regulators know it. They contend that they have never intended to require advanced treatment of storm water, and that cities can meet water quality standards by taking inexpensive steps, such as additional street sweeping. We conclude the opposite.

The federal Clean Water Act requires local authorities to list the water bodies that do not yet meet applicable water quality standards. The draft 2002 list includes almost all of the major bodies of water in Los Angeles County. Placing a water body on this list triggers a planning process to establish the Total Daily Maximum Load of pollutants that the water body can receive. The new allowable load for trash in Los Angeles stormwater is zero.

Neither the County nor the City of Los Angeles has the means to accommodate this requirement, and this is just the tip of the regulatory iceberg. The U.S. Environmental Protection Agency entered a consent decree with several litigants requiring that the Los Angeles Regional Water Quality Board adopt many more such limits by 2012. The board's permit process will be used to implement load allocations for municipal storm water discharges.

Bacteria is listed as major problem by the Los Angeles Regional Water Board. Bacteria would most likely have to be controlled by use of chlorination, the way sewage is now treated in the region's nine wastewater plants. We estimate that the capital costs for facilities to provide this level of treatment to storm-water flows 364 days per year would approach \$30 billion.

The state water quality standard category defining the maximum level of metals in storm water requires that discharges into many of the region's water bodies meet drinking water and ground water recharge standards. Strict maximum limits on pesticides would be necessary to support fishing and swimming. Reverse osmosis or microfiltration are the only technologies available to remove the pesticides and heavy metals from storm water. The capital costs of regional-scale, reverse-osmosis facilities sufficient to provide treatment to storm water flows 364 days per year would approach \$130 billion.

There is more. Even if the region constructs treatment facilities, we cannot expect to rely on existing flood retention areas like the Sepulveda Basin and the Whittier Narrows to store untreated storm water. The Clean Water Act requires that storm water be cleaned prior to release into such federal waterways. The land assembly costs for storm water retention areas sufficient to accommodate flows 364 days per year would be very high, approaching \$50 billion.

The federal Clean Water Act was passed in 1973 to address major sources of surface water pollution such as large factories and sewage treatment plants. The results are impressive. Water quality is improving in Los Angeles and Long Beach Harbors, and fishermen report the return of species of sea and bird life absent for many years. However, the environmentalists dominating state and regional water quality boards are reluctant to recognize that we cannot afford to apply the same discharge standards to homes, small businesses, schools, parks, roads, and other facilities.

Fortunately, a great deal can yet be accomplished by sticking to the basics. Los Angeles County and local cities are experimenting with trash removal devices along several of the region's flood control channels. The County and City of Los Angeles have agreed to divert dry season urban runoff to the sanitary sewer system in locations where storm drains flow onto local beaches. On average, the region is dry for 333 days per year, and more dry weather diversion of urban runoff promises further improvements in water quality at exactly the times when people use the area's beaches and rivers.

These steps are important, but will not satisfy local water quality authorities. The political failure of Plescia's bill is a wake-up call. Los Angeles and San Diego members of the State Legislature should join forces now to block the state and regional water quality control boards' march toward uneconomic and unintended consequences.

The authors are faculty members at the University of Southern California and authors of the recent report, "An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County." James E. Moore, II, is Professor of Civil Engineering and of Public Policy and Management. Peter Gordon and Harry

Richardson are Professors of Policy, Planning, and Development and of Economics. John Kuprenas is Research Assistant Professor of Civil Engineering, and Jlin- Jen Lee is Professor of Civil and Environmental Engineering. #